IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 387 OF 1999

With

SPECIAL CIVIL APPLICATION NO.389 OF 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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UNION OF INDIA & ORS. - Petitioner(s)
Versus
HIRTAY RAM VARMA & ORS. - Respondent(s)

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Appearance :
MS. P.J. DAVAWALA for Petitioner(s).
MR. R.K. MISHRA for Respondent(s).

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 29/03/2006

COMMON ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. With the consent of the parties, the matters are

finally heard.

2. As many as 10 persons, who had been removed from services somewhere in April-1993, had approached the Central Administrative Tribunal, Ahmedabad Bench, by filing Original Application No.547 of 1994. They had submitted that those persons had worked with the petitioner-Establishment for the period between 1989 to 1993, as per the details given in Annexure-A1 annexed to their Original Application. They also made a submission that they were eligible for grant of temporary status under the Scheme prepared by the respondents in the year 1991 and under subsequent orders. According to them, they, having worked for more than 240 days, had acquired the status of temporary employee and as they had worked continuously with the petitioner-Establishment, without observing the provisions of Section-25F of the Industrial Disputes Act, 1947 (“the Act” for short), they could not be removed. The present petitioners, who were the respondents in the said Original Application, submitted that the correctness or otherwise of the details of the work and working was under verification; they, however, submitted that the original petitioners had not worked for more than 240 days in the preceding twelve months, to be counted from the date of their termination, therefore, they could be removed from the services and they were not entitled to any temporary status.

3. After hearing the parties, the learned Tribunal by its Order dated 19th August, 1998, allowed the petition filed

by as many as nine persons, but, rejected the claim of one Harinarayan K. Yadav. Being aggrieved by the dismissal of the Original Application, Harinarayan Yadav had filed Special Civil Application No.9794 of 1998. The said petition has been dismissed by us today itself.

4. It was submitted at the time of admission of the petition that the Tribunal was unjustified in not granting proper opportunity to the present petitioners to make an inquiry into the status of the present respondents and/or verify the correctness or otherwise of the statement made by them before the Tribunal. It was also submitted before the Court that one Mr. K. M. Baria, Mustering Official, had been on the rolls of this Circle from September 1984 to 13th April, 1985, during which period, he had been issued five muster rolls only and none of the said muster rolls indicated the names of the casual labourers.

5. It is submitted by Ms. P. J. Davawala, learned Counsel for the petitioners, that in view of the inquiry made subsequent to the final order passed by the Tribunal, it would clearly appear that the present respondents/labours have obtained fraudulent certificates and have been successful in misleading the Tribunal. It is submitted that in view of the inquiry and the verification report, the respondents did not deserve any order in their favour.

6. Mr. R. K. Mishra, learned Counsel for the

respondents, submitted that since after 1993, the year of termination, the respondents approached the Tribunal in the year 1994, till date of final disposal of the matter by the Tribunal, the petitioners did not make any inquiry into the certificates and, therefore, the Tribunal was absolutely justified in raising a presumption against the petitioners and presuming the facts in favour of the present respondents. He submits that the *ex parte* and lopsided inquiry made by the present petitioners cannot be allowed to seal the fate of the present respondents. He submits that if an inquiry was required to be made, then, proper opportunity of hearing ought to have been afforded to the respondents and without affording any opportunity of hearing, if an action is taken by the petitioners, then, the inquiry report would not bind the present respondents.

7. It is to be seen from the order passed by the learned Tribunal that it was persuaded by the fact that since after 1993, no inquiry was made by the present petitioners. The Tribunal has observed that in absence of any verification report or inquiry report, it would be prudent to rely upon the submissions made by the present respondents. The Tribunal has observed that even at the time of final hearing, no further light could be thrown by the respondents (present petitioners) upon the authenticity of the documents. The Tribunal also observed that despite passing of many years, the present petitioners did not make the inquiry nor had been able to arrive at a conclusion as to whether the certificates provided

by the present respondents were authentic or not.

8. In our considered opinion, on these findings, the Tribunal would have been justified in quashing the order of termination, but, could not proceed further to observe that no inquiry can be made or no verification can be sought into the certificates submitted by the present respondents. Once the right of the present petitioners to make an inquiry or obtain verification report is closed, then, nothing would float on the surface. We would be justified in saying that the order of termination would fall simply on the ground that before issuing the order of termination, no inquiry was made, nor any inquiry was made after giving due opportunity of hearing to the present respondents during the pendency of the matter before the Tribunal. The inquiry report/verification report submitted by the present petitioners, so far as these proceedings are concerned, would not be sufficient to hold that the respondents had not worked for the period for which they have certificate with them. It is trite law that if an inquiry is to be made into a particular fact, the result, of which is likely to affect the status and right of a third party, then, such third party is required to be heard and submit his case before the inquiry report is filed. In the present matter, subsequent to the decision of the Tribunal, an inquiry, after giving due opportunity of hearing to the respondents, has not been made. Under the circumstances, we would not rely upon the inquiry report submitted before this Court.

9. So far as the final judgement of the Tribunal in relation to reinstatement is concerned, we would certainly maintain it, but, we set aside the other findings relating to the respondents' working for 240 days or in relation to their entitlement for conferral of the temporary status.

10. The petition is allowed with the following directions:

(a) The order of reinstatement made by the Tribunal is confirmed, but, however, the right of the present petitioners to make an inquiry into the certificates would be available to the present petitioners.

(b) The petitioners would be entitled to make an inquiry into the certificates submitted by the present respondents. However, the petitioners would be obliged to give due opportunity of hearing to the respondents and they shall also be obliged to pass a speaking order. Within one month from today, the petitioners shall be obliged to reinstate these nine respondents and would also be obliged to pay them their salaries and other perks available to them from the date of their joining. This reinstatement shall be subject to the final outcome of the inquiry.

(c) So far as the salary for the period between the

date of the order passed by the Tribunal and the date of disposal of this Writ Application are concerned, the same shall be subject to the final outcome of the inquiry. If, in the inquiry, it is held that the respondents had worked for the said period, as submitted by them in Annexure-A1, and their terminations were illegal, then, they would be held entitled to the past salary, but, in case, any other order is passed in the inquiry, the entitlement of the respondents shall be subject to the final outcome of the inquiry.

We, however, make it clear that we are not making any observations on the merits in the matter to influence the rights of the parties because the petitioners will have to enter into the arena of fact finding inquiry and a decision is yet to be arrived at. Rule is made absolute to the aforesaid extent only. No costs.

11. So far as Special Civil Application No.389 of 1999 is concerned, it is to be seen from Order dated 22nd September, 1998 passed by the Tribunal in Original application No.582 of 1994, that relying upon the order passed in Original Application No.547 of 1994, it had disposed of the said application. As the order passed in Special Civil Application No.547 of 1994 has been partly set aside by us, we accordingly dispose of this Writ Application. The observations made aforesaid shall also be taken into consideration by the present

petitioners while making inquiry into the case of Ram Rajmani Dubey. Rule is made absolute to the aforesaid extent only. No costs.

[R.S.Garg, J.]

[Sharad D. Dave, J.]

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